IN THE HIGH COURT OF URRARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 316 of 2005 (S/B)

Date of decision: 9th December, 2005

A.F.R. (Approved for Reporting)

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Not Approved for Reporting

Date Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 316 of 2005 (S/B)

Narendra Singh,
S/o Late Sri Dilawar Singh,
Executive Engineer, Maneri Bhali Nirman Khand-III,
Chinyali Saur,
Uttarkashi. ……. Petitioner

Versus

1. State of Uttaranchal,
through Secretary,
Irrigation and Power,
Govt. of Uttaranchal, Dehradun.
2. Chief Engineer and Head of Department,
Irrigation Department,
Uttaranchal, Dehradun.
3. Superintending Engineer and
Engineer-in-charge, Maneri Bhali,
Stage-II, Circle Joshiyara,
Uttarkashi. …… Respondents

Mr. L.K. Tiwari, Advocate for the petitioner.
Mr. K.P. Upadhyaya, Standing Counsel for the State of Uttaranchal.

JUDGMENT

Coram: Hon. Cyriac Joseph, C.J.
Hon. Rajesh Tandon, J.

CYRIAC JOSEPH, C.J. (Oral)

1. The challenge in the writ petition is against Annexure 1 order dated 28.11.2005 passed by the first respondent placing the petitioner under suspension.

2. When this case came up for hearing on 06.12.2005, learned Standing Counsel for the Government of Uttaranchal was directed to make available for the perusal of the Court the relevant Government file relating to Annexure 1 order. In compliance with the said direction dated 06.12.2005, learned Standing Counsel has made available the relevant Government file. We have perused the

Government file and we have heard learned counsel for the petitioner and the learned Standing Counsel.

3. Since we had the benefit of perusing the Government file and hearing the learned counsel for the parties in detail, with the consent of the learned counsel for the parties, the writ petition itself is being disposed of, without waiting for any counter affidavit.

4. Having perused the relevant file and having considered the submissions made by the learned counsel for the parties, we are satisfied that in view of the nature of the allegations contained in Annexure 1 order and the explanations offered by the petitioner in the writ petition in respect of those allegations, there was not sufficient or valid ground for placing the petitioner under suspension. Even if the allegations warrant detailed enquiry and stern action if the allegations are proved, suspension was not necessary to facilitate such an enquiry and disciplinary action. In the light of the law laid down by this Court in **S.K. Goel Vs State of Uttaranchal and another [2005(2) U.D. 11],** we are of the view that the impugned order is arbitrary and illegal. In S.K. Goel's case, this Court has held as follows:

> "4. It is not necessary to place a Government employee under suspension in every case where disciplinary proceedings are contemplated. The continuance of the employee in the same post or at the same station may be considered likely to influence or prejudice the enquiry and the disciplinary proceedings. Sometimes, in view of the nature of the post held by the officer and the nature of the irregularities alleged, the very continuance of the officer in service during the disciplinary proceedings may be considered undesirable. In the first case, the proper conduct of enquiry and disciplinary proceedings can be ensured by a mere transfer of the officer. Only in the second case the officer need be placed under suspension. Hence, it is incumbent upon the disciplinary authority to consider whether a transfer of the officer will be sufficient or whether suspension itself is required. Only when the

> disciplinary authority is satisfied that suspension itself is required, an officer can be placed under suspension. If and when the suspension is questioned in a Court of law, the disciplinary authority is bound to show that he had arrived at a satisfaction that a mere transfer was not sufficient and that suspension itself was required. If the disciplinary authority fails to show that he had properly considered the matter and was satisfied that suspension itself was required, the order of suspension is liable to be declared illegal and arbitrary and quashed on that basis. It should be remembered that though suspension is not a punishment, it visits the employee with serious civil consequences and loss of reputation and prestige. Hence, an order of suspension should not be passed lightly, casually or without proper application of mind."

We have considered the materials contained in the Government file in the light of the above quoted judgment. We are satisfied that the Government has nor properly considered whether, for a proper conduct of enquiry and disciplinary proceedings, transfer of the petitioner from the present station to another station would have been sufficient and whether suspension itself was required. The Government has not even considered whether transfer would have been sufficient in the given circumstances. Learned Standing Counsel pointed out that the Additional Secretary to Government had pointed out that the allegations against the petitioner were serious enough to warrant a major penalty, if the charges were established against him and that the continuance of the petitioner in the present division might enable him to manipulate the records relating to the case. It is true that sometimes in view of the nature of the post held by the officer and the nature of the irregularities alleged, the very continuance of the officer in service during the disciplinary proceedings may be considered undesirable. But in view of the nature of the allegations contained in the impugned order and the explanations offered by the petitioner, it cannot be said that the very continuance of the officer in service during the disciplinary proceedings is undesirable. Learned Standing Counsel contended that allegation No. 2 relating to excess

payment of a sum of Rs. 4.5 crores to the contractor M/s Hydel Construction Company is serious enough to warrant suspension. But we find that the alleged excess payment to the contractor was not made by the petitioner but by his predecessor. The petitioner was posted in the present division only in the year 2002 whereas the alleged excess payment was made during the period from 1981 to 1991. However, learned Standing Counsel submitted that when audit objection was raised regarding the excess payment to the contractor, the petitioner sent a letter dated 10.09.2004 to the Superintending Engineer expressing the opinion that there was no case of excess payment and thus tried to protect the contractor and the Executive Engineer who had made the excess payment. We have read the said letter dated 10.09.2004 written by the petitioner. It only contains his remarks to the audit objection. On the basis of the old files available in the office and scrutiny of the records by the Assistant Engineer and random checking by the petitioner, he formed the opinion that there was no case of excess payment. He put on record the said opinion and suggested that the same may be communicated to the Accountant General, if the higher authorities also agreed with him. The concluding sentence in the letter reads as follows:

> "In view of the above facts and records, I am of the opinion that there is no case of excess payment and the same is recommended to be communicated to Accountant General, if higher authorities do agree also."

It the Superintending Engineer did not agree with the opinion of the petitioner, it was open to the Superintending Engineer to point out the mistake or defect in the petitioner's assessment or understanding and to give appropriate directions. The mere expression of opinion by the petitioner in a given case, that too, subject to approval by the superior officer, cannot be made basis for suspension of the petitioner. There is no allegation that the petitioner made any illegal payment to the contractor or disobeyed any direction or order of the Superintending

Engineer in the matter. Learned Standing Counsel pointed out the impropriety on the part of the petitioner in marking a copy of the above-mentioned letter to the contractor. Before a final decision was taken in the matter by the Department, the petitioner could not and should not have communicated his opinion to the contractor. But this act of impropriety on the part of the petitioner may be a ground for disciplinary action, but certainly not a sufficient ground for suspension.

5. Similarly, even assuming that the continuance of the petitioner in the present division may enable him to manipulate the records, the object of preventing such manipulation could have been achieved by transferring the petitioner to another division. But this aspect is not seen considered by the Government in this case.

6. It is also significant to note that even according to the learned Standing Counsel, there was no irregularity in making the payment to the contractor and the irregularity was in not recovering the amount from the contractor, as he had not disbursed the amount which was received by him for paying wages of the labourers engaged by him in the project. The impugned order shows that the petitioner was corresponding with the contractor in the matter. The charge against the petitioner is that in the meanwhile, in his letter to the Superintending Engineer he opined that there was no excess payment. In one way, the opinion is correct because the irregularity was not in the payment to the contractor but in the payment of wages by the contractor to his employees. Hence, suspension is not justified for expressing the said opinion.

7. In the above circumstances, we are of the view that there is no justification for keeping the petitioner under suspension pending

disciplinary proceedings. Hence, Annexure 1 order is liable to be quashed.

8. Accordingly, Annexure 1 order is quashed without prejudice to the right of the respondents to transfer the petitioner to any other division, if found necessary. We make it clear that the views expressed by us regarding the nature of the allegations contained in Annexure 1 order are only for the purpose of deciding whether suspension of the petitioner was required in the given circumstances and that those views will not prejudice the right of the enquiry officer or the disciplinary authority to arrive at appropriate conclusions in the matter.

9. Writ petition stands disposed of in the above terms.

(Rajesh Tandon, J.) **(Cyriac Joseph, C.J.)**
09.12.2005 **09.12.2005**

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